

A G R E E M E N T

This Agreement entered into this 1st day of May, 1973, between the State of Arizona, acting by and through its State Highway Commission, hereinafter termed "State" and the Phelps Dodge Corporation, a New York corporation, hereinafter termed "Phelps Dodge",

Witnesseth: That Phelps Dodge desires to expand its open pit mining operation in the vicinity of Morenci, Arizona, and in so doing will encompass an area presently traversed by U.S. Highway 666 (Clifton-Alpine Highway), necessitating the relocation thereof, and

That, pursuant to the provisions of that certain Easement Deed, dated November 28, 1949 and recorded in Book 12 of Deeds at pages 347-350, records of Greenlee County, Arizona, Phelps Dodge desires to relocate said highway so as to avoid said pit expansion.

Therefore, the parties hereto covenant and agree as follows:

1. That Phelps Dodge shall relocate said highway upon the right of way which is presently used by Phelps Dodge and has been so used by Phelps Dodge for over twenty (20) years as a mine haulage road and for other purposes in connection with its mining operations at Morenci, Arizona, and which traverses patented lands owned by Phelps Dodge, lands of the State, patented lands owned by third parties over which Phelps Dodge has acquired a right of way by prescriptive use, and public domain of the United States through which Phelps Dodge has acquired a right of way under the mining laws.
2. The cost for the construction of said replacement highway shall be borne solely by Phelps Dodge.
3. Phelps Dodge shall acquire all right of way easements required for said replacement highway except over Public Lands, and shall furnish State proof of ownership of said right of way easements.
4. The State shall acquire right of way easements over the Public Lands required for said replacement highway and Phelps Dodge shall reimburse State for all costs incurred for such acquisition, provided however, that Phelps Dodge shall acquire and/or extinguish any and all private interests which may exist in and to said right of way easements over and upon said Public Lands.
5. In the event Phelps Dodge is unable to acquire upon reasonable terms and conditions all of the right of way easements required for said replacement highway across non-public lands and/or is unable to acquire and/or extinguish the private interests which may exist in and to the right of way easements over Public lands, State will acquire, through its power of Eminent Domain, such easements as in the opinion of State are necessary for said right of way and Phelps Dodge shall reimburse State for all costs incurred for said acquisition.
6. Phelps Dodge shall convey to the State by Easement Deed a 100-foot right of way across lands of Phelps Dodge described as parcel 6-097 in Exhibit "A" to accommodate said replacement highway, and shall subordinate its right and interest in and to the lands of the public domain of the United States, lands of the State, and lands of third persons described as parcels 6-099, 6-098 and 6-098-1

I hereby certify that the within  
Instrument was filed and recorded  
Oct 24, 1973, at 11:00 AM  
DRL:SSC  
request of Henry Dept.

RECORDED IN BOOK 12

Page 347-350

PARCEL 6-097

in Exhibit "A" to the rights of the State for public highway purposes and to the regulations of the State Highway Commission applying thereto in furtherance of the public safety. Phelps Dodge shall further grant any temporary rights of way over, upon and across lands of Phelps Dodge, in addition to the parcel of land specifically described herein, that may be required for the purpose of, or in the course of construction and repair of said highway. The foregoing grants and subordination shall be subject, however, to the following stipulations, reservations, covenants and conditions which run with and are attached to all right and interest to be granted and to any subordination of right and interest as herein provided:

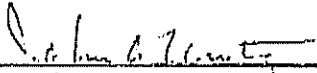
- a. Said parcel of land shall be used for no other purpose than the construction and maintenance of a public highway.
- b. If at any time said parcels of land cease to be maintained as a public highway by the State or any of its political subdivisions, then in that event the easements granted herein and the subordination of Phelps Dodge's rights and interests in said parcels of land shall terminate forthwith.
- c. Phelps Dodge, its successors and assigns shall have the right at all times to conduct mining operations forty (40) feet beneath the grade of the highway when constructed, and to extract ores, rock, earth and minerals therefrom, and in connection therewith to construct, use, and maintain any facilities deemed by it necessary for these purposes, provided that such activities do not interfere with the use of said parcel as a public highway; and Phelps Dodge agrees to indemnify and save harmless the State from all liability however arising to any and all persons whomsoever, whether for personal injuries or otherwise and from any claim of any person of damage to or loss of property by reason of the development, use and maintenance of said mining operations and facilities or by reason of anything done, or permitted to be done, or omitted to be done by Phelps Dodge in and about the area of said State Highway; further provided that if any of said operations or facilities should substantially interfere with the use for highway purposes of the land included in this right-of-way, and as a consequence it should become necessary to abandon the existing highway and to relocate the same, Phelps Dodge, its successors or assigns, shall pay the reasonable cost of such relocation.
- d. Phelps Dodge reserves the right for and on its behalf and for and on behalf of the Morenci Water and Electric Company, and each of their successors and assigns, to construct, maintain, use, repair, alter and remove, in, along, upon, over, under and across the parcel of land herein described, any and all pipelines, ditches, electric transmission lines, telephone lines, trestles, bridges, and similar means of conveyance, which they or either of them may desire, which will not prevent the use of said property as a State or County highway, provided however, that Phelps Dodge shall give the State written notice before commencing construction of any such new facility, and all work performed in conjunction with said construction, maintenance, use, repair, alteration and removal, shall be done in accordance with and conform to all applicable local ordinances and construction standards.

7. The State, upon accepting the above mentioned Easement Deed, shall abandon:
- To Phelps Dodge Corporation and to Western Copper and Mining Company, as their interests may appear, all right, title and interest in and to the existing highway which State has beginning at a point in a portion of the Heckscher Mining Lode Claim No. 1799 in Section 21, Township 3 South, Range 29 East and thence continuing in a Southerly direction to a terminus near the center of Section 23, Township 4 South, Range 29 East, Gila and Salt River Meridian, Greenlee County, Arizona, Except:
  - That portion in and to the existing highway which State has on the Rockhouse Mining Lode Claim No. 4148 shall be abandoned to the Owner or the successors of interest of the Owner of said mining claim and said person(s) shall have a means of ingress and egress as necessary between said mining claim and a public street or highway.

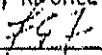
IN WITNESS WHEREOF the parties hereto have set their hands and official seals the day and year first above written.


PHELPS DODGE CORPORATION

STATE OF ARIZONA


  
Vice President and General Manager

Title

Approved as to form  
J. VASS, RICHEL & JENCKES  


  
JUSTIN HERMAN  
State Highway Director

APPROVED AS TO FORM

  
Assistant Attorney General  
Attorney for Arizona Highway  
Department

FILE 55-274

STATE OF ARIZONA }  
COUNTY OF MARICOPA } ss.

On this the 15<sup>th</sup> day of May, 1973, before  
me MELVIN C. RUTZ, the undersigned Notary Public, personally  
appeared Justin Herman, State Highway Director, known to me (or satisfactorily  
proven) to be the person whose name is subscribed to the within instrument  
and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF I hereunto set my hand and official seal.  
My Commission expires:

My Commission Expires Jan. 14, 1978

Melvin C. Rutz  
NOTARY PUBLIC

STATE OF ARIZONA }  
COUNTY OF COCHISE } ss.

On this the 1st day of May, 1973, before  
me Hazel W. Shearmire, the undersigned officer, personally  
appeared John A. Lentz, who acknowledged  
himself to be the Vice President and General Manager  
Phelps Dodge Corporation, a corporation,  
and that he, as such Vice President and General Manager, being authorized  
to do, executed the foregoing instrument for the purposes therein contained  
signing the name of the corporation by him self as Vice President and  
General Manager.

IN WITNESS WHEREOF I hereunto set my hand and official seal.  
Commission Expires:

My Commission Expires May 9, 1973

Hazel W. Shearmire  
NOTARY PUBLIC

Approved by the Arizona State  
Highway Commission

9-7, 1973

Accepted: STATE OF ARIZONA

10/12, 1973

BY [Signature]  
Chief, Office of the Arizona  
Highway Department

BOOK 55 PAGE 275